

Decision 02-01-066

January 23, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition by Pac-
West Telecomm, Inc. (U.5266-C) for
Arbitration of an Interconnection
Agreement with Roseville Telephone
Company (U-1015-C).

Application 00-05-021
(Filed May 12, 2000)

ORDER DENYING REHEARING OF DECISION 00-09-032

On October 10, 2000, Roseville Telephone Company ("Roseville") filed an Application for Rehearing of Decision (D.) 00-09-032. We have carefully considered all the arguments presented by Roseville and are of the opinion that good cause for rehearing has not been shown.

D.00-09-032 approved an interconnection agreement between Roseville and Pac-West Telecomm, Inc. ("Pac-West") and required Roseville to pay reciprocal compensation to Pac-West for Internet service provider ("ISP")-bound calls. Roseville's arguments focus on whether we have the jurisdiction and the authority to require reciprocal compensation for ISP-bound calls in its interconnection agreement. Roseville contends that in previous cases, the Commission's authority to adopt reciprocal compensation as a compensation mechanism for ISP-bound traffic relied on contractual interpretation of existing interconnection agreements. In the absence of an existing interconnection agreement between Roseville and Pac-West, Roseville believes that we do not have the legal authority to order it to pay Pac-West reciprocal compensation for ISP-bound traffic, and therefore argues that we are under an obligation to state an alternate legal basis for ordering reciprocal compensation in this proceeding. Roseville further argues that we are legally barred from treating ISP-bound calls as

local traffic for reciprocal compensation purposes because such calls are jurisdictionally interstate calls pursuant to the Federal Communication Commission's ("FCC") February 26, 1999, Declaratory Ruling.¹

Roseville's arguments are without merit. The Commission's authority to order reciprocal compensation for ISP-bound calls is not limited to situations where it is interpreting existing interconnection agreements. Federal law supports the Commission's authority to impose reciprocal compensation in arbitration proceedings as well.²

We have consistently rejected similar arguments in the past, holding that the imposition of reciprocal compensation for ISP-bound traffic does not violate federal law. (See *In re Competition for Local Exchange Service*, D.99-07-047; *Pacific Bell/Pac-West Interconnection Agreement Arbitration*, D.99-12-025; *Pacific Bell/MFS-WorldCom Interconnection Agreement Arbitration*, D.00-05-051.) In addition, there is ample authority holding that interconnection agreements that require reciprocal compensation for ISP-bound calls do not violate federal law. (See *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n of Texas*, 208 F.3d 475 (5th Cir. 2000) (holding that FCC precedent supports treating calls to ISPs as local calls for purposes of reciprocal compensation agreements);³ see also *Illinois Bell Tel. Co. v. WorldCom Techs*, 179 F.3d 566 (7th Cir. 1999) (affirming the Illinois Commerce Commission's decision requiring reciprocal compensation

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket No., 96-98, FCC No. 99-38 (released February 26, 1999) ("FCC Declaratory Ruling").

² The FCC recently released another order on April 27, 2001 concerning compensation for ISP-bound calls. This was issued on remand after the D.C. Circuit vacated the FCC's February 26, 1999 Declaratory Ruling. The FCC found that the reciprocal compensation provisions of section 251(b)(5) of the Act do not extend to ISP-bound traffic and established a cost recovery mechanism for these calls. However, this cost recovery scheme is prospective only and "does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here." (Declaratory Ruling ¶ 82.) Accordingly, the FCC's order does not affect the Commission's decision in the Roseville/Pac-West arbitration.

³ Although the court relied on the FCC's determination in its Declaratory Ruling that state commission decisions could require reciprocal compensation for ISP calls and the Declaratory Ruling has since been vacated by the D.C. Circuit, this part of the FCC's Declaratory Ruling was not criticized or challenged by the D.C. Circuit.

for ISP-bound traffic does not violate the 1996 Telecommunications Act or the FCC's interpretation of the Act).)

The fact that there was no existing interconnection agreement between Roseville and Pac-West is irrelevant. Our authority to impose reciprocal compensation extended to arbitration proceedings, regardless of whether there was a pre-existing agreement. For example, the FCC's Declaratory Ruling recognized that nothing in the Act or in the FCC rules:

“prohibit a state commission from concluding *in an arbitration* that reciprocal compensation is appropriate in certain circumstances not addressed by § 251(b)(5), so long as there is no conflict with governing federal law.... In the absence of a federal rule...[a] state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding... does not conflict with any [FCC] rule regarding ISP-bound traffic.”

(See Declaratory Ruling ¶ 26) (emphasis added).)

Moreover, the FCC recognized that sufficient authority exists under § 252 of the Act⁴ to authorize state regulatory commissions to require reciprocal compensation for ISP-bound traffic. Section 252 confers jurisdiction on state commissions to resolve open issues in an arbitration, and extends to issues not addressed by § 251(b)(5). The Fifth Circuit found that the Texas PUC had properly exercised its jurisdiction in requiring reciprocal compensation for ISP-bound calls. (“Clearly, then, whether voluntarily negotiated or confected through arbitration, commission-approved agreements requiring payment of reciprocal compensation for calls made to ISPs do not conflict with §§ 251 and 252 of the Act or with the FCC's regulations or ruling.” *Southwestern Bell*, 208 F.3d at 483.) In arbitrating the issue of reciprocal compensation payment for ISP-bound calls, the Commission was operating directly under the authority provided by § 252(b) of the Act. Roseville's argument that the Commission lacked authority to impose

⁴ Statutory references are to the 1996 Telecommunications Act.

reciprocal compensation is without merit.

Roseville also argues that our Decision violates the Fifth and Fourteenth Amendments because it does not provide Roseville with an opportunity to earn a reasonable rate of return. As we stated in the Roseville Decision, a section 252 arbitration proceeding is not an appropriate forum for Roseville to address charges it may apply to its ratepayers. In the Roseville decision, we noted that "[r]atepayers have little opportunity to participate in an arbitration proceeding, which must be decided on an expedited basis that allows only minimal public notice." (D.00-09-032 at 10.) Under our rules governing these types of arbitrations, the only opportunity ratepayers or other members of the public have to participate in the arbitration proceeding is the filing of limited comments on the Draft Arbitrator's Report. Roseville may raise its concerns in its next general rate case. Therefore, Roseville's argument fails since a section 252 arbitration proceeding is not the appropriate forum to address charges it may apply to its ratepayers.

No further discussion of Roseville's arguments is warranted.

Therefore **IT IS ORDERED** that:

1. Rehearing of D.00-09-032 is hereby denied.
2. This Proceeding is closed.

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners